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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,001	03/12/2004	Bernd Schmandt	LLP113US	7567
51092 7590 01/28/2008 ESCHWEILER & ASSOCIATES LLC 629 EUCLID AVENUE, SUITE 1000 NATIONAL CITY BUILDING CLEVELAND, OH 44114			EXAMINER FLORES, LEON	
			ART UNIT 2611	PAPER NUMBER
			NOTIFICATION DATE 01/28/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing@eschweilerlaw.com

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/799,001	Applicant(s) SCHMANDT ET AL.	
	Examiner Leon Flores	Art Unit 2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) ~~the date~~ ^{the date} in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: 17.
- Claim(s) rejected: 1-16, 18 and 19.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


DAVID C. PAYNE
SUPERVISORY PATENT EXAMINER

Applicant asserts that, "Gan does teach determining channel performance at one time (Col. 14, lines 38 -45), this does not imply or suggest to anyone that the determination of the interference on this channel is independent of the determination of interference on other channels as claimed. Rather, Gan simply is silent regarding this feature".

The examiner respectfully disagrees. The reference of Gan does teach that because interference may change over time, it may be useful to periodically change the set of channels being used. Some previous good channels may become bad and vice versa. (See col. 20, lines 43-53 & col. 6, line 47 – col. 7, line 19) And this is due to the fact that a mobile communication system (please note that this system uses good channels 0-24 and 31-78 and bad channels 25-30, as recited in col. 8, lines 1-6) that previously caused interference may no longer be a problem if the communication system is no longer operating or has moved away from the communication system, but also assume that another communication system is now active and causing interference on channels 3, 22, 48, and 53. (See col. 8, lines 30 - 45) As you can see, channels 0-24 & 31-78 were classified as good channels, however, since the communication system operating nearby may have caused channels 3, 22, 48, and 53 to be classified as bad. Because of this, testing of each channel must be performed at different time intervals in order to identify with channel is working properly (interference -free) and which one is not.(interference) Furthermore, one skilled in the art would know that in a FH communication system frequency hops from one frequency to another at a different time interval. And each of these channels must be tested to assure that interference is not present at that particular time interval.

However, taking the contrary, the applicant is silent in regards to the reference of Gillis et al. (US Patent 5,323,447), which was used by the examiner in conjunction with Gan in order to reject claim 1 twice. (See office action dated 10/19/2007) The reference of Gillis was used to alleviate the limitations of "detecting multiple erroneous transmissions in the frequency channel at a time that is independent of the other channels". (See office action dated 10/19/2007)

Applicant further asserts that, "Gan does not make such measurements specifically for the frequency range of an eliminated frequency channel as claimed. Rather, Gan broadly talks about use of received strength signals for use in evaluating all channels, and more particularly, channels that have not been eliminated from the frequency hopping sequence".

The examiner respectfully disagrees. The reference of Gan does teach that because interference may change over time, it may be useful to periodically change the set of channels being used. Some previous good channels may become bad and vice versa. (See col. 20, lines 43-53 & col. 6, line 47 – col. 7, line 19)

Furthermore, in the last office action, the claims 1 & 2 were objected to because the limitation "if" should have been replaced with "when". However, the applicant did not change it. (See last sentence in claim 1) The examiner suggested this change because what if this condition "reinserting the frequency channel into the frequency hopping sequence if the measured strength is below a prescribed threshold value" does not occur. Therefore, claims 1-12 stand objected since the parent claim is objected.